## INDEX.


Page

Reply of petitioners to brief for United States in opposition . . . . . 1

Statement . . . . . 1

Argument . . . . . 4

Conclusion . . . . . 7


## CITATIONS.


CASES:

*Bowles* v. *United States*, 319 U. S. 33 . . . . . 2
*Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47 . . 5
*Great Northern Railway Co.* v. *Steinke*, 261 U. S. 119 2
*Paridy* v. *Caterpillar Tractor Co.*, 48 F. 2d 166 . . . . . 2
*Richmond Co. v. United States*, 275 U. S. 331 . . . . . 4
*United States* v. *Lederer*, 140 F. 2d 136 . . . . . 2

STATUTES:

*Agricultural Adjustment Act of 1938* (Act of February 16, 1938, c. 30, 52 Stat. 31, as amended):
Section 376 (7 U. S. C. A. § 1376) . . . . . 5
Section 385 (7 U. S. C. A. § 1385) . . . . . 5

*Federal Register Act* (Act of July 26, 1935, c. 417, 49 Stat. 500):
Section 5 (44 U. S. C. A. § 305) . . . . . 2
Section 7 (44 U. S. C. A. § 307) . . . . . 2

*Soil Conservation and Domestic Allotment Act* (Act of February 29, 1936, c. 104, 49 Stat. 1151, as amended):
Section 8(g) (16 U. S. C. A. § 590 h(g)) . . . . . 4
Section 14 (16 U. S. C. A. § 590n) . . . . . 5

*Tucker Act* (Act of March 3, 1887, c. 359, 24 Stat. 505, as amended; Judicial Code, § 24(20); 28 U. S. C. A. § 41(20)) . . . . . 4

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945.

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No. 801.

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J. H. CRAIN AND R. E. LEE WILSON, JR., Trustees of Lee Wilson & Company, A Business Trust, *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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**On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.**

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## REPLY OF PETITIONERS TO BRIEF FOR UNITED STATES IN OPPOSITION.

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The brief for the United States in opposition to the petition for a writ of certiorari was served on petitioners on March 6, 1946. This reply brief is filed pursuant to subdivision 4(a) of Rule 38 of the Revised Rules of the Supreme Court.

### STATEMENT.

Respondent in its statement of the case (Br. 3-4) attempts to change the factual situation here involved by bringing into the case various Government documents not relied on by either of the courts below and, in one instance,

not even in the record. It is submitted that the picture should not be clouded in this manner.

The petition for a writ of certiorari presents solely a question of statutory construction, the asserted importance of which is not controverted by the Government. While the case should not be argued on its merits at this time, it is believed proper to reply briefly to the additional facts stated by respondent.

The letter of December 12, 1938, attempting to limit the time for making assignments, was a mere interoffice communication. The appropriation passed by Congress was made available until June 30, 1940 (R. 1-2, 9, 16). The letter of December 12, 1938, was not published in the Federal Register, and it is not shown that petitioners had actual notice of it. This letter accordingly does not have the effect of a regulation (Federal Register Act, §§5, 7; 44 U. S. C. A. §§305, 307) and can hardly in and of itself serve to limit the time fixed by Congress for making allocations of the appropriation.

Respondent next asks this Court (Br. 4) to take judicial notice of certain documents in the files of the Department of Agriculture which were never offered in evidence or even suggested to the District Court.[1] These documents, if pertinent, likewise go to the merits of the case and not to the question of statutory construction on which the Circuit Court reversed the trial court.

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[1] The papers here involved are not subject to judicial notice under the rationale of *Bowles* v. *United States*, 319 U. S. 33. In that case the petitioner throughout the proceedings had wanted the documents which the Court judicially noticed and all that the Government did was to present them to the Court. It is one thing to furnish, though belatedly, documents demanded by a litigant throughout the proceedings. It is something entirely different to attempt to bind a litigant by documents never requested by him and with respect to which he has had no opportunity to rebut their contents at the trial. *Great Northern Railway Co.* v. *Steinke*, 261 U. S. 119, 125-126; and *Paridy* v. *Caterpillar Tractor Co.*, 7 Cir., 48 F. 2d 166, 169, certiorari denied 278 U. S. 617. Cf. *United States* v. *Lederer*, 7 Cir., 140 F. 2d 136, 139, certiorari denied 322 U. S. 734.

Moreover, it is submitted that consideration of these documents is properly directed to the District Court. After a trial on the merits of the case the District Court held that the assignment made by Broughton—

> * * * was executed solely for the purpose of securing the payment by R. O. Broughton to [petitioners] of the amounts due [petitioners] by him for the money, supplies and services furnished to him for the production of his crops in the year 1938 * * * (R. 17).

This finding is supported by substantial evidence (R. 23-25).

It is a strange situation indeed if administrative law has reached the point where the administrator is permitted to deprive the trial court of the basis for the administrative action and then secure a reversal of the trial court's findings of fact by asking appellate courts to take judicial notice of papers allegedly on file in Washington, D. C., but never brought to the attention of the trial judge sitting in Arkansas. It is even stranger that an appellate court is asked to weigh the findings of fact of a trial court against the alleged findings of an administrative official which are brought before the court, if at all, by judicial notice suggested only in appellate proceedings.

That the trial court expressly found that the assignment met the requirements of the regulations, seems a complete answer to the asserted contrary finding of the Secretary of Agriculture.[2]

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[2] The documents printed as Appendix B of the Government's Brief do not mention the assignment here involved from Broughton. Thus this Court is asked to assume that Broughton's assignment is covered in those referred to in Appendix B. As a result, in addition to arguing on the basis of judicial notice (instead of the evidence of record), respondent would ask also that the Court assume the facts which it failed to prove and now fails to find in its documents. The Court is thus asked to move from the evidence of record, to papers on file somewhere in Washington, and then to reverse the trial court's findings of fact by drawing assumptions from documents which are not properly the subject of judicial notice.

## ARGUMENT.

Respondent's first point appears to be that Congress, having originally enacted general legislation invalidating the assignment of claims against the Government and having subsequently enacted special legislation permitting the assignment of certain agricultural claims, intended in doing so to nullify the special legislation at the whim of the administrator by simply providing that the special legislation should not impose any liability on the "Secretary or any disbursing agent" *if* payment should *happen*[3] to be made to the assignor. Contrary to the Circuit Court's holding (R. 43) this limitation of liability would very definitely have "real meaning or effect" if a suit were brought personally against the Secretary of Agriculture or a disbursing agent.

In a footnote at the bottom of page 9 of its brief respondent seeks to distinguish *Richmond Co.* v. *United States*, 275 U. S. 331, by stating that the litigant therein had "a remedy specifically accorded him by statute to sue the United States." That is just the point. Petitioners herein do too. The Tucker Act gives the petitioners the same right to sue the United States as did the statute in the *Richmond Co.* case. The parallel seems complete.

In discussing point 2 of the argument respondent contends that § 8(g) of the Soil Conservation and Domestic Allotment Act "specifically withholds" jurisdiction over a suit by an assignee (Br. 9) and "expressly prohibits" such suits (Br. 10). This assertion goes far beyond even the holding of the Circuit Court. That Court felt obliged to say that § 8(g) "must *by implication* preclude a suit by an assignee" (R. 43; italics supplied). Since the District Court held that § 8(g) did not prevent a suit under the

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[3] Note the use of the word "happen" in this connection in the regulations cited by the Government (Br. top of p. 21). A fair reading of this so-called regulation suggests only that payment to the assignor might be made through inadvertence. There is no indication that the Secretary of Agriculture reserved any "veto" power over these assignments such as is now asserted in effect.

Tucker Act (R. 17) and the Circuit Court could hold otherwise only "by implication," it is difficult to see how § 8(g) can now be said "specifically" to withhold jurisdiction or "expressly prohibit" suits.

Respondent next takes exception to petitioners assertion that "authority to sue the sovereign—when once given—is to be liberally construed." Its premise seems to be that a litigant must find express authority to sue in every statute passed by Congress. Such is not the case. Authority to sue the Government on claims founded upon "any law of Congress" or upon "any contract, express or implied, with the Government" is found in the Tucker Act. Thus the Government has already provided the remedy.

It can readily be admitted that the suability of the sovereign must be restricted to the terms of the consent, but where, as here

> * * * authority to sue is given that authority is liberally construed to accomplish its purpose. *Great Northern Life Ins. Co.* v. *Read*, 322 U. S. 47, 54 (n. 5).

In the instant case it is not a question of imposing a liability upon a government without "clear words" as respondent contends (Br. 10, n. 6) because both the Tucker Act and the Soil Conservation and Domestic Allotment Act *are clear* The question, rather, is whether jurisdiction and consent to suit having once been given may be *repealed by implication.*

Respondent concludes with the suggestion that the determination as to the "facts constituting the bases for any payment" was reviewable only by the Secretary of Agriculture under § 14 of the Soil Conservation and Domestic Allotment Act.[4] The answer to this is that there is no dis-

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[4] In footnote 7 (Br. 11) respondent refers the Court to § 385 of the Agricultural Adjustment Act of 1938. If the suggestion is that these Acts are in *pari materia*, then the Court should also note § 376 of the cited Act which vests jurisdiction in the district court "specifically to enforce the provisions of this title" and provides that the "remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law" (7 U. S. C. A. § 1376).

pute about "the facts constituting the bases for any payment" as evidenced by the fact that Broughton was paid. Respondent complains that the administrative determination must stand unless clearly wrong[5] (Br. 12, n. 8). So must the finding of facts of the District Court. As respondent points out—

> * * * there is nothing in the record to support a finding that this administrative decision was arbitrary, capricious, clearly wrong, or without reasonable or rational basis.

The reason is obvious. There is nothing in the record to show any administrative determination. By the same token there is nothing in the record to show that the findings of the District Court are erroneous.

In short, as pointed out above, this Court is asked to take judicial notice of documents *never* presented to the trial court and *to assume* that those documents cover an assignment from Broughton (who is not even mentioned in the documents). The Court is then asked to hold that the findings of fact of the trial court should be overruled because of the judicially noticed alleged findings of the Secretary of Agriculture. And in this connection the Court is to assume that these asserted administrative findings should apply to the case at bar and should supercede those of the District Court based on evidence adduced in open court.

It is respectfully submitted that if such a novel method of litigating is to be sanctioned it should only be after this Court has so decided.

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[5] If the so-called "voiding" of the assignment here involved (Br. 4, cf. Br. 12, n. 8) is an administrative determination, it is obviously "clearly wrong". The Secretary has no authority to void any assignment or to shorten without notice the time for filing assignments.

## CONCLUSION.

Despite respondent's argument directed to the merits of the case and based primarily on matters not of record, the fact remains that the Circuit Court has sanctioned the repeal "by implication" of a jurisdictional statute contrary to the applicable decisions of this Court and has failed to interpret a remedial statute in line with the purpose it was to accomplish. It is not denied by respondent that the matter is of current public importance. The holding of the Circuit Court is wrong on the jurisdictional question decided and petitioners are entitled to prevail on the merits of their case as was decided by the District Court. The only question now presented is one of statutory construction and it should not be shunted by a prolonged discussion of documents never presented to the trial court.

Wherefore, it is prayed that the petition for a writ of certiorari will be granted.

Respectfully submitted,

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March, 1946.

# BRIEF FOR THE RESPONDENTS IN OPPOSITION

# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statutes and regulations involved | 2 |
| Statement | 3 |
| Argument | 7 |
| Conclusion | 13 |
| Appendix A | 14 |
| Appendix B | 23 |


## CITATIONS


| Cases: | |
|---|---|
| *Bates & Guild Co.* v. *Payne*, 194 U. S. 106 | 12 |
| *Board* v. *Hearst Publications*, 322 U. S. 111 | 12 |
| *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258 | 9 |
| *Bowles* v. *United States*, 319 U. S. 33 | 4 |
| *Decatur* v. *Paulding*, 14 Pet. 497 | 12 |
| *Dismuke* v. *United States*, 297 U. S. 167 | 11, 12 |
| *Gray* v. *Powell*, 314 U. S. 402 | 12 |
| *Great Northern Ins. Co.* v. *Read*, 322 U. S. 47 | 8, 10 |
| *Ickes* v. *Fox et al.*, 300 U. S. 82 | 8 |
| *Louisiana* v. *McAdoo*, 234 U. S. 627 | 12 |
| *Lynch* v. *United States*, 292 U. S. 571 | 11 |
| *Martin* v. *National Surety Co.*, 300 U. S. 588 | 8 |
| *Mine Safety Appliances Co.* v. *Forrestal*, No. 71, October Term, 1945, decided December 10, 1945 | 9 |
| *Moore* v. *United States*, 45 F. Supp. 656 | 11 |
| *Ness* v. *Fisher*, 223 U. S. 683 | 12 |
| *Pine Hill Co.* v. *United States*, 259 U. S. 191 | 10 |
| *Richmond Co.* v. *United States*, 275 U. S. 331 | 9 |
| *Silberschein* v. *United States*, 266 U. S. 221 | 12 |
| *Stark* v. *Wickard*, 321 U. S. 288 | 9 |
| *Thompson* v. *Deal*, 92 F. 2d 478 | 9 |
| *United States* v. *Atchison, T. & S. F. Ry. Co.*, 249 U. S. 451 | 12 |
| *United States* v. *Babcock*, 250 U. S. 328 | 11 |
| *United States* v. *Michel*, 282 U. S. 656 | 10 |
| *United States* v. *Shaw*, 309 U. S. 495 | 10 |
| *United States* v. *Sherwood*, 312 U. S. 584 | 10 |
| *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506 | 10 |
| *Williamsport Co.* v. *United States*, 277 U. S. 551 | 12 |
| *Work* v. *Rives*, 267 U. S. 175 | 7 |

| Statutes and Regulations: | Page |
|---|---|
| Act of June 25, 1910, c. 423, 36 Stat. 851, as amended July 1, 1918, c. 114, 40 Stat. 704 | 9 |
| Agricultural Adjustment Act of 1938, § 385, 7 U. S. C. § 1385 | 11, 12, 18 |
| Judicial Code, § 24 (20), 28 U. S. C. § 41 (20) | 10 |
| Soil Conservation and Domestic Allotment Act, 16 U. S. C. §§ 590a–590q: | |
| § 7 (a) | 12, 14 |
| § 8 (a) | 15 |
| § 8 (b) | 11, 15 |
| § 8 (d) | 11, 17 |
| § 8 (g) | 2, 5, 12, 17 |
| § 14 | 11, 12, 18 |
| R. S. § 3477, 31 U. S. C. § 203 | 7 |
| R. S. § 3737, 41 U. S. C. § 15 | 7 |
| **Miscellaneous:** | |
| Comp. Gen. Dec. A–80449, May 27, 1941 | 4 |
| H. Rep. No. 1767, 75th Cong., 3d Sess. | 8 |
| Regulations of the Agricultural Adjustment Administration (7 CFR 700.15 (d)) | 22 |
| U. S. Department of Agriculture Instructions (ACP-70, April 9, 1938) | 19 |

# In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 801

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES OF LEE WILSON & COMPANY, A BUSINESS TRUST, PETITIONERS

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The findings of fact and conclusions of law of the District Court of the United States for the Eastern District of Arkansas, Jonesboro Division (R. 16–18), were entered without an opinion. The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. 40–44) is reported at 151 F. 2d 606.

### JURISDICTION

The judgment of the District Court was entered on November 28, 1944 (R. 18). The judgment of

the Circuit Court of Appeals was entered on November 7, 1945 (R. 44). The petition for a writ of certiorari was filed on February 4, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Petitioners[1] are the assignees of one Broughton's claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act, 16 U. S. C. §§ 590a–590q. With knowledge of this assignment, the officials of the Department of Agriculture made the benefit payments to Broughton. The question presented is whether petitioners may maintain an action against the United States based on the assignment, particularly in view of the provision in Section 8 (g) of the Act that it does "not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment" (16 U. S. C. § 590h (g)).

## STATUTES AND REGULATIONS INVOLVED

The relevant portions of the statutes and regulations involved are set forth in Appendix A, pp. 14–22.

[1] See fn. 8, *infra*.

## STATEMENT

On May 29, 1944, petitioners brought this suit against the United States under Section 24 (20) of the Judicial Code (the Tucker Act, 28 U. S. C. § 41 (20) (R. 1), seeking judgment in the amount of $738.99 (R. 1, 4) on a claim based upon an assignment to Lee Wilson & Company[2] by one Broughton of his claim to soil conservation benefits for 1938 under the Soil Conservation and Domestic Allotment Act (R. 3–4).

Early in 1938 Broughton leased a farm of 387 acres from petitioner Crain (R. 2, 9, 16, 23, 33). Pursuant to the Soil Conservation and Domestic Allotment Act, the Secretary of Agriculture made a cotton acreage allotment for the farm for the year 1938 which was not exceeded by Broughton (R. 2–3, 9, 16). The assignment to Lee Wilson & Company was executed by Broughton on December 21, 1938, on a form provided by the Department of Agriculture (R. 3, 10–15, 16). On December 12, 1938, the Director of the Southern Division of the United States Department of Agriculture Agricultural Adjustment Administration had directed that:

> No assignment of payments under the 1938 Agricultural Conservation Program may hereafter be accepted unless (1) there is no prior assignment outstanding; and

[2] Lee Wilson & Company is a common law business trust of which petitioners are the trustees, petitioner Crain being the managing trustee (R. 1, 9, 16).

> (2) the producer making such assignment shows definitely that the assignment is being made as security for cash or advances which will be used to finance the planting of a crop in 1938 for harvest in 1939 or the carrying out of an approved soil-building practice in 1938. (R. 15.)

On April 9, 1941, the Broughton assignment was declared void by the Secretary of Agriculture [3] for the reason that it was not executed in compliance with Section 8 (g) of the Soil Conservation and Domestic Allotment Act (*infra*, p. 17) "and the governing regulations" (*infra*, pp. 19–22). On March 11, 1942, the Agricultural Adjustment Administration paid to Broughton the amount payable to him under the 1938 conservation program (R. 10, 16) and payment to petitioners was refused (R. 10, 16).

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[3] The action of the Secretary of Agriculture and other officials of the Department of Agriculture respecting the assignment here in issue was one item of a large number of contemporary actions and determinations relating to the activities of Lee Wilson & Company. The considerations and recommendations respecting all these matters and the official actions thereon were grouped together by the Department of Agriculture in a single series of documents which are a matter of public record in the Department of Agriculture and of which judicial notice may be taken by this Court. *Bowles* v. *United States*, 319 U. S. 33. Because of the volume of these documents, excerpts have been made of the parts relating to assignments and specifically those executed in December 1938. These excerpts appear in Appendix B, pp. 23–28, *infra*. The Comptroller General approved the administrative determination of the Secretary of Agriculture on May 27, 1941 (A–80449).

The amended answer (R. 5–8) filed herein by the respondent denied petitioners' allegation of jurisdiction under the Tucker Act and denied that petitioners were owed any money under the 1938 conservation program promulgated pursuant to the Soil Conservation and Domestic Allotment Act (R. 5). The amended answer averred that the Broughton assignment was invalid in that it "was not timely executed" and further "was obtained not as security for cash or advances to finance the making of the 1938 crop but for the purpose of effecting collection of amount due [petitioners] by said Broughton" (R. 8).[4] The amended answer further alleged that no suit was authorized against the United States on a claim such as that asserted by petitioners and that no claim was stated against the respondent upon which relief could be granted (R. 8).

On November 28, 1944, the District Court issued its findings of fact (R. 16–17) and conclusions of law (R. 17–18) and entered judgment for petitioners in the amount of $687.57 (R. 18). The District Court found that petitioners had early in 1938 (R. 3, 9, 16) advanced to Broughton "cash, supplies and services, in order to enable [him] to produce a crop in * * * 1938"; that "concurrently" with petitioners' agreement to furnish

[4] Cf. Section 8 (g) of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590h (g); Appendix A, *infra*, p. 17; R. 15.

Broughton with cash, supplies, and services "and in consideration of such agreement to furnish, * * * Broughton agreed to execute an assignment to [petitioners], under * * * section 8 (g) of the Soil Conservation and Domestic Allotment Act * * * on a form prescribed by the Department of Agriculture when such printed form should become available"; and that, although the necessary assignment forms became available in May or June 1938 (R. 10, 16, 26), the Broughton assignment of December 21, 1938 (R. 11–15), was executed by Broughton pursuant to his earlier oral agreement and "solely for the purpose of securing the payment by R. O. Broughton to [petitioners] of the amounts due [petitioners] by him for the money, supplies and services furnished to him for the production of his crops in * * * 1938" (R. 16–17). The District Court concluded that petitioners were entitled to maintain the action, that the court was "not bound by the action of the Secretary of Agriculture in denying payments" to petitioners, and that the assignment of December 21, 1938, "relates back to the oral agreement for its execution, and was a valid assignment" (R. 17).

On appeal to the Circuit Court of Appeals (R. 18–19), the judgment of the District Court was reversed and the cause remanded "with instruction to dismiss the complaint" (R. 44).

## ARGUMENT

The court below held "that the last sentence of Section 8(g) of the Soil Conservation Act expressly prohibits suit against the Secretary of Agriculture or any disbursing agent if payment is made to the farmer notwithstanding existence of an outstanding assignment" and that, to give that sentence "real meaning or effect", "suit by an assignee against the United States under the Tucker Act" was precluded (R. 43). We submit that this determination was clearly correct.

1. Absent specific congressional provision for the assignment of soil conservation benefit payments, the invalidity of the Broughton assignment would be beyond question. R. S. § 3477, 31 U. S. C. § 203; R. S. § 3737, 41 U. S. C. § 15. That provision is to be found in Section 8(g) of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590h(g). That section, however, specifically recognizes that "payment to the farmer" may be "made without regard to the existence of any such assignment" and provides that in such event Section 8(g) "shall not authorize any suit against or impose any liability upon the Secretary [of Agriculture] or any disbursing agent". The court below was clearly correct in holding that the latter provision could have no "real meaning or effect" unless it precluded "a suit by an assignee against the United States under the Tucker Act" (R. 43). Cf. *Work* v.

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*Rives,* 267 U. S. 175. "Otherwise," as stated by the court below, "the United States could be subjected to a double liability which we believe Congress intended to prohibit" (R. 43). Cf. *Martin* v. *National Surety Co.,* 300 U. S. 588, 594.

Congress, in providing for the assignment of payments, made a concession which it could and did condition as it saw fit. The conditions surrounding the assignments provided for in Section 8 (g), and particularly the limitation on suit by the assignee in the event that payment is made to the assignor in disregard of the assignment, clearly reflect a congressional intent that the administration of the program of benefits provided for by the Soil Conservation and Domestic Allotment Act should not be retarded or obstructed by wrangling over assigned claims. Cf. *Martin* v. *National Surety Co.,* 300 U. S. 588, 594; *Great Northern Ins. Co.* v. *Read,* 322 U. S. 47, 54. Moreover it is inconceivable that Congress could have intended that an assignee might sue the United States to recover money which the Secretary of Agriculture had paid to the assignor under express statutory authority.[5]

[5] H. Rep. No. 1767, 75th Cong., 3d Sess., p. 60, cited by petitioners (Pet. 6), lends no support to their argument that the limitation on suit contained in Section 8 (g) of the Soil Conservation and Domestic Allotment Act was intended merely to protect the Secretary of Agriculture and disbursing agents from personal liability. Nor do the cases cited by petitioners (Pet. 6) stand for that proposition. In *Ickes* v. *Fox et al.,* 300 U. S. 82, an injunction suit brought against

2. It is thus clear that the Soil Conservation and Domestic Allotment Act specifically withholds jurisdiction over a suit by assignees such as petitioners. Nor is the consent of the United States to be sued on claims of this sort to be found elsewhere. Petitioners base their action on the Tucker Act, which gives the district courts original jurisdiction of certain suits against the United States on claims "founded upon the Constitution of the United States or any law of Con-

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the Secretary of the Interior in the District of Columbia, this Court held merely that the United States was not an indispensable party. *Thompson* v. *Deal*, 92 F. 2d 478 (App. D. C.), indicates that in some circumstances a government official may be required by bill in equity brought against him personally to pay over money in which the United States has no pecuniary interest and which is in his possession under an invalid law. See *Mine Safety Appliances Co.* v. *Forrestal*, No. 71 this Term, decided December 10, 1945.

Other cases cited by petitioners (Pet. 6–7) are likewise not in point. *Stark* v. *Wickard*, 321 U. S. 288, likewise was an injunction suit against the Secretary of Agriculture, brought in the District Court for the District of Columbia which "has a general equity jurisdiction authorizing it to hear the suit". 321 U. S. at 290. *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, 263, merely held that a "section * * * of a tax law giving to taxpayers opportunity to secure refund of overpayments that had become barred * * * is to be construed liberally in favor of the taxpayers." In *Richmond Co.* v. *United States*, 275 U. S. 331, this Court held R. S. § 3477, 31 U. S. C. § 203, inapplicable to the assignment of a patent in a situation where its application would have deprived the patent owner of a remedy specifically accorded him by statute to sue the United States in the Court of Claims. Act of June 25, 1910, c. 423, 36 Stat. 851, as amended July 1, 1918, c. 114, 40 Stat. 704, 705.

gress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States * * *". 28 U. S. C. § 41 (20).[6] But the Tucker Act does not create petitioners' cause of action. By its very terms, it merely gives the sovereign's consent to be sued in the district courts upon such causes of action as may be founded upon the Constitution, a law of Congress, or a contract with the United States. Petitioners claim that their cause of action arises under the Soil Conservation and Domestic Allotment Act (R. 1). If so, since petitioners are assignees, it must arise under Section 8 (g) and, as shown above, that section, while providing for assignments, expressly prohibits suits thereon. The mere fact that the United States creates rights does not obligate it to provide a remedy against itself through the courts.

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[6] Contrary to petitioners' assertion (Pet. 5) that "authority to sue the sovereign—when once given—is to be liberally construed", it is well settled that the jurisdictional provision invoked by petitioners must be construed "with that conservatism which is appropriate in the case of a waiver of sovereign immunity" (see *United States* v. *Sherwood*, 312 U. S. 584, 590) and that "a liability in any case is not to be imposed upon a government without clear words". See *Pine Hill Co.* v. *United States*, 259 U. S. 191, 196. See also *United States* v. *Shaw*, 309 U. S. 495, 500–501; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506, 512–513; *United States* v. *Michel*, 282 U. S. 656, 659; and *Great Northern Ins. Co.* v. *Read*, 322 U. S. 47, cited by petitioners (Pet. 5) in support of their "liberal construction" argument, but which squarely holds that suability of the sovereign must be restricted "to the terms of the consent". 322 U. S. at 54.

*United States* v. *Babcock,* 250 U. S. 328, 331; *Lynch* v. *United States,* 292 U. S. 571, 580–582; *Dismuke* v. *United States,* 297 U. S. 167, 171–172. Nor does examination of other sections of the Soil Conservation and Domestic Allotment Act reveal a legislative intent to afford a remedy by suit against the United States to recover soil conservation benefits even in the absence of an assignment. Cf. *Moore* v. *United States,* 45 F. Supp. 656 (S. D. Iowa). Indeed the Act is replete with evidence of the congressional intent to vest full authority and discretion in the Secretary of Agriculture.[7] And the principle has long been recognized that courts will not review the exercise of executive discretion such as that vested

[7] In Section 8 (b) the Secretary is authorized to make payments "to agricultural producers * * * in amounts determined by [him] to be fair and reasonable". Such payments may be measured by the producers' "equitable share, as determined by the Secretary, of the normal national production of any commodity * * * required for domestic consumption" or by "their equitable share, as determined by the Secretary, of the national production of any commodity * * * required for domestic consumption and exports adjusted to reflect the extent to which their utilization of cropland * * * conforms to farming practices which the Secretary determines will best effectuate" the policies of the Act. Section 8 (d) requires that payments shall be "conditioned upon the utilization of the land * * * in conformity with farming practices which the Secretary finds tends to effectuate" the policies of the Act. And Section 14 provides that the facts constituting the bases for any payment or grant made under Section 8 "shall be reviewable only by the Secretary of Agriculture". See also Section 385 of the Agricultural Adjustment Act of 1938, 7 U. S. C. § 1385.

in the Secretary of Agriculture by the Soil Conservation and Domestic Allotment Act with respect to the making of benefit payments or grants of other aid. *Decatur* v. *Paulding*, 14 Pet. 497; *Ness.* v. *Fisher*, 223 U. S. 683; *Louisiana* v. *McAdoo*, 234 U. S. 627; *United States* v. *Atchison, T. & S. F. Ry. Co.*, 249 U. S. 451; *Silberschein* v. *United States*, 266 U. S. 221; *Williamsport Co.* v. *United States*, 277 U. S. 551; cf. *Dismuke* v. *United States*, 297 U. S. 167, 172.[8]

[8] Even if this principle were inapplicable to this case, the decision below would command support as the only one consistent with well-established principles of judicial review of administrative action. The basic question in the case was whether the Broughton assignment had been given to secure "cash or advances to finance making a crop" or a "preexisting indebtedness". 16 U. S. C. § 590h (g). This was a factual question which had been determined adversely to petitioners by the Department of Agriculture (Appendix B, pp. 23–28, *infra*). Under Section 14 of the Soil Conservation and Domestic Allotment Act, 16 U. S. C. § 590n, that determination was reviewable only by the Secretary. (Cf. Section 385 of the Agricultural Adjustment Act of 1938, 7 U. S. C. § 1385.) It must stand unless shown to be arbitrary or capricious, clearly wrong, or without reasonable or rational basis. *Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Gray* v. *Powell*, 314 U. S. 402; *Board* v. *Hearst Publications*, 322 U. S. 111; cf. *Dismuke* v. *United States*, 297 U. S. 167, 172. There is nothing in the record to support a finding that this administrative decision was arbitrary, capricious, clearly wrong, or without reasonable or rational basis. Indeed, if the administrative action be examined in the light of the facts (R. 10, 16, 25–26, 28, 33), any other determination seemingly would have been in conflict not only with the policies of the Act (§ 7 (a), 16 U. S. C. § 590g (a)), but also with the express provisions thereof (§ 8 (g), 16 U. S. C. § 590h (g))

CONCLUSION

The decision is clearly correct and there is no conflict of authorities. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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and the regulations of the Department of Agriculture relating to assignments (R. 15, 9; *infra*, pp. 19–22; note particularly the following instructions: I D *infra*, p. 20; III A, *infra*, p. 21; see also §§ I F, *infra*, pp. 20–21; VI A, *infra*, p. 21; and VI B, *infra*, pp. 21–22.)